

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PERMA-PIPE, INC.
Plaintiff,

v.

BURTON H. KLEINFELD, ESQ. and
KLEINFELD, MEYER & DePAOLA,
Defendants.

CIVIL ACTION NO. 05-10454 NMG

MOTION FOR JUDGMENT ON THE PLEADINGS
OF THE DEFENDANT, MEYER & DePAOLA

The defendant, Meyer & DePaola (the “Association”) moves this Honorable Court to dismiss all claims pending against it in this matter pursuant to Rule 12(c) of the Federal Rules of Civil Procedure. The Plaintiff in this matter, Perma-Pipe, Inc. (“Plaintiff”), cannot succeed on its claims against the Association.

Plaintiff’s negligence claim, set forth as Count One of the Complaint, must be dismissed because the Association is not a proper party to this action; as an unincorporated association, the Association cannot be sued. Further, the individual voluntary members of the Association are not liable for Kleinfeld’s alleged legal malpractice, and liability cannot be imputed to the other individual members of the Association because the Association is neither a partnership-in-fact nor a partnership-by-estoppel. Likewise, the claim for violations of G.L. c. 93A, set forth in Count Two of the Complaint, must be dismissed because the Association is not a proper party to this action and the Association cannot be held liable for Kleinfeld’s alleged legal malpractice. As further grounds for this Motion, the Association submits the accompanying Memorandum in Support of Motion for Judgment on the Pleadings of the Defendant, Meyer & DePaola.

WHEREFORE, the Association respectfully requests that this Honorable Court grant this Motion for Judgment on the Pleadings and award the Association attorneys' fees and costs associated with the defense of this action, as well as any other relief deemed appropriate.

Respectfully submitted,
MEYER & DePAOLA,
By its attorneys,



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Dated: September 15, 2005.

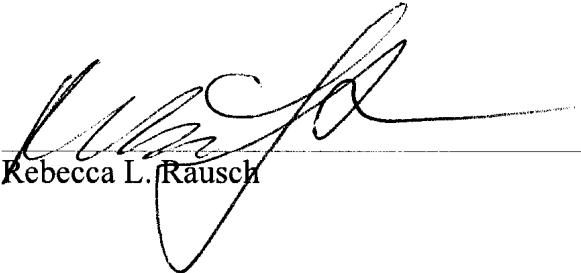
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CERTIFICATE OF SERVICE

I, Rebecca L. Rausch, hereby certify that on this 15th day of September, 2005, I caused of copy of the foregoing document to be sent via first class mail, postage pre-paid, to:

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